

### REMARKS

This is in response to the Office Action mailed on April 7, 2004, and the references cited therewith.

Claim 42 is amended. No claims are canceled or added; as a result, claims 38–45, 47–65 and 68–79 remain pending in this application.

#### Withdrawal of Rejections Previously Appealed

Applicant notes that the present Office Action sets forth an entirely new ground of rejection and drops the rejections that were the subject of the appeal. Therefore, Applicants respectfully submit that the Patent Office has acquiesced that the pending claims are all patentable over the withdrawn rejections.

#### Telephone Interview of June 29, 2004

Applicants undersigned attorney wishes to thank Examiner Coleman for the courtesies extended in the course of the telephone interview of June 29, 2004. In the course of the interview, the comments appearing at paragraphs 32–42 of the Office Action were discussed as was the relationship of the cited Tang patent 5,506,172 to the subject matter of the claims. No agreement to allow the claims was reached.

#### Comments re Information Disclosure Obligation

Paragraphs 32–42 of the Office Action contain a number of statements concerning the rule 56 duty to disclose information. Applicants pointed out that the cited Tang patent had been made of record in the application with a Supplemental Information Disclosure Statement submitted February 22, 2002 and initialed by Examiner Berezny on May 20, 2002<sup>1</sup>.

Applicants believe that the Information Disclosure Statements submitted in the course of the prosecution of the present application reflect the totality of patents cited against the parent Applicants' parent application and its progeny. Applicants also attach hereto a Statement of Related cases which updates the record concerning the the related cases and their current status.

#### §102 Rejection of the Claims

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<sup>1</sup> A copy of the signed 1449 form was attached to the Office Action mailed June 5, 2002.

All of the pending claims (38–45, 47–65 and 68–79) were rejected under 35 USC § 102(e) as being anticipated by Applicants' Assignee's (Micron Technology, Inc.'s) U.S. Patent 5,506,172 which was issued April 9, 1996 to Sanh Tang, who is one of the two named co-inventors of the present application.

Applicant does not admit that the cited Tang patent is prior art, and reserves the right to swear behind it at a later date. Nevertheless, Applicant respectfully submits that the pending claims are distinguishable over what may be shown in Tang for the reasons argued.

While the cited Tang patent relates to providing an electrical interconnection between an outer layer and an inner layer, it is distinguishable from what is claimed in claim 38, for example. Claim 38 calls for particular relationship between the thickness of the oxide layer and the height of the first poly layer that is not shown in the cited Tang patent:

“a first polycrystalline silicon layer overlying the oxide region but not the first substrate region and *having a thickness selected such that a lowest upper surface of the first polycrystalline silicon layer is higher than a highest upper surface of the oxide region*<sup>2</sup>”

In contrast, Tang shows<sup>3</sup> a structure where the first poly layer 48 has its lowest upper surface either *lower than* or at a height *about equal to* the highest upper surface of oxide region 44. Furthermore, Tang's specification does not ascribe any particular importance to the thickness of the first polycrystalline layer 48 relative to the thickness of oxide 44 as Applicants' patent specification does<sup>4</sup>. Tang simply does not show the thickness relationship claimed in claim 38 and the other pending independent claims.

In view of the clear difference between what is claimed in the pending claims and what is shown in the cited Tang patent, the rejection fails to make a *prima facie* case of anticipation and should be withdrawn. Reconsideration and allowance of the pending claims is respectfully requested.

#### §112 Rejection of the claims

Claim 42 was rejected under 35 USC §112 on the grounds that there was not an antecedent basis for “a first polycrystalline layer.” Entry of the amendment to claim 42 will

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<sup>2</sup> Emphasis added.

<sup>3</sup> In FIG. 7 and elsewhere.

<sup>4</sup> See page 4, last line through page 5, lines 1–2.

overcome the basis for the rejection. Reconsideration and allowance of claim 42, as amended is respectfully requested.

Double Patenting

Applicants have submitted a Terminal Disclaimer to overcome the rejection based on obviousness double patenting.

Conclusion

Applicant respectfully submits that all of the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6970 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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By their Representatives,

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Date

July 1, 2004

By

Charles E. Steffey

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: MS Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 30th day of July, 2004.

Tina Kohut

Name

Z. U. A.

Signature